

Department of the Navy, DoD

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consistent with these Rules and remains ultimately responsible for acting in the best interest of the individual client.

(3) The exercise of professional judgment in accordance with paragraphs (a)(1) and (a)(2) of this section shall not, standing alone, be a basis for an adverse evaluation or other prejudicial action.

(b)(1) This section recognizes that a judge advocate is a military officer required by law to obey the lawful orders of superior officers. It also recognizes the similar status of a civilian USG attorney. Nevertheless, the practice of law requires the exercise of judgment solely for the benefit of the client and free of compromising influences and loyalties. Thus, when a covered USG attorney is assigned to represent an individual client, neither the attorney's personal interests, the interests of other clients, nor the interests of third persons should affect loyalty to the individual client.

(2) Not all direction given to a subordinate covered attorney is an attempt to influence improperly the covered attorney's professional judgment. Each situation must be evaluated by the facts and circumstances, giving due consideration to the subordinate's training, experience, and skill. A covered attorney subjected to outside pressures should make full disclosure of them to the client. If the covered attorney or the client believes the effectiveness of the representation has been or will be impaired thereby, the covered attorney should take proper steps to withdraw from representation of the client.

(3) Additionally, a judge advocate has a responsibility to report any instances of unlawful command influence. See R.C.M. 104, MCM, 1998.

§ 776.57 Unauthorized practice of law.

(a) *Unauthorized practice of law.* A covered USG attorney shall not:

(1) Except as authorized by an appropriate military department, practice law in a jurisdiction where doing so is prohibited by the regulations of the legal profession in that jurisdiction; or

(2) Assist a person who is not a member of the bar in the performance of ac-

tivity that constitutes the unauthorized practice of law.

(b) Limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. A covered USG attorney's performance of legal duties pursuant to a military department's authorization, however, is considered a Federal function and not subject to regulation by the states. Thus, a covered USG attorney may perform legal assistance duties even though the covered attorney is not licensed to practice in the jurisdiction within which the covered attorney's duty station is located. Paragraph (a)(2) of this section does not prohibit a covered USG attorney from using the services of non-attorneys and delegating functions to them, so long as the covered attorney supervises the delegated work and retains responsibility for it. See § 776.55 of this part. Likewise, it does not prohibit covered USG attorneys from providing professional advice and instruction to non-attorneys whose employment requires knowledge of law; for example, claims adjusters, social workers, accountants and persons employed in Government agencies. In addition, a covered USG attorney may counsel individuals who wish to proceed pro se or non-attorneys authorized by law or regulation to appear and represent themselves or others before military proceedings.

§§ 776.58–776.65 [Reserved]

§ 776.66 Bar admission and disciplinary matters.

(a) *Bar admission and disciplinary matters.* A covered attorney, in connection with any application for bar admission, appointment as a judge advocate, employment as a civilian USG attorney, certification by the JAG or his designee, or in connection with any disciplinary matter, shall not:

(1) Knowingly make a false statement of fact; or

(2) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority,

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except that this section does not require disclosure of information otherwise protected by § 776.25 of this part.

(b) The duty imposed by this section extends to covered attorneys and other attorneys seeking admission to a bar, application for appointment as a covered USG attorney (military or civilian) or certification by the JAG or his designee. Hence, if a person makes a false statement in connection with an application for admission or certification (e.g., misstatement by a civilian attorney before a military judge regarding qualifications under Rule for Courts-Martial 502), it may be the basis for subsequent disciplinary action if the person is admitted or certified, and in any event may be relevant in a subsequent admission application. The duty imposed by this section applies to a covered attorney's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a covered attorney to make a knowing misrepresentation or omission in connection with a disciplinary investigation of the covered attorney's own conduct. This section also requires affirmative clarification of any misunderstanding on the part of the admissions, certification, or disciplinary authority of which the person involved becomes aware.

§ 776.67 Judicial and legal officers.

(a) *Judicial and legal officers.* A covered attorney shall not make a statement that the covered attorney knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, investigating officer, hearing officer, adjudicatory officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) [Reserved]

§ 776.68 Reporting professional misconduct.

(a) *Reporting professional misconduct:*

(1) A covered attorney having knowledge that another covered attorney has committed a violation of this part that raises a substantial question as to that covered attorney's honesty, trustworthiness, or fitness as a covered attorney in other respects, shall report such violation in accordance with the

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procedures set forth in subpart C of this part.

(2) A covered attorney having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall report such violation in accordance with the procedures set forth in subpart C of this part.

(3) This Rule does not require disclosure of information otherwise protected by § 776.25 of this part.

(b) [Reserved]

§ 776.69 Misconduct.

(a) *Misconduct.* It is professional misconduct for a covered attorney to:

(1) Violate or attempt to violate this subpart, knowingly assist or induce another to do so, or do so through the acts of another;

(2) Commit a criminal act that reflects adversely on the covered attorney's honesty, trustworthiness, or fitness as an attorney in other respects;

(3) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(4) Engage in conduct that is prejudicial to the administration of justice;

(5) State or imply an ability to influence improperly a government agency or official; or

(6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(b)(1) Judge advocates hold a commission as an officer in the Navy or Marine Corps and assume legal responsibilities going beyond those of other citizens. A judge advocate's abuse of such commission can suggest an inability to fulfill the professional role of judge advocate and attorney. This concept has similar application to civilian USG attorneys.

(2) Covered non-USG attorneys, Reservists, and Retirees (acting in their civilian capacity), like their active-duty counterparts, are expected to demonstrate model behavior and exemplary integrity at all times. JAG may consider any and all derogatory or beneficial information about a covered attorney, for purposes of determining the attorney's qualification, professional competence, or fitness to practice law